Supreme Court, U.S.
FILED

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IN THE SUPREME COURT OF THE UNITED STATES
OF AMERICA
OCTOBER 1994 TERM

IN THE INTEREST OF:)
M.K.)
(Born: 4/8/77))
C.H.)
(Born 8/18/78))
M.K.)
(Born 5/18/83),)
Minor Children)

Petition for Writ of Certiorari from
Order of the Pennsylvania Supreme Court
Dated May 10, 1994

PETITION FOR WRIT OF CERTIORARI

Kathleen T. O'Boyle, Esquire
PA. I.D. No. 55701
Counsel of Record for Petitioner,
HARRY L. NICKLOW, JR.

O'Boyle & Associates
4047 Old William Penn Highway
Murrysville, PA 15668
Phone: 412-733-5040
FAX: 412-733-5041

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I.
QUESTIONS PRESENTED FOR REVIEW

I. WHETHER THE THE TRIAL COURT'S RETROACTIVE APPLICATION OF THE PENNSYLVANIA RAPE SHIELD LAW, WITHOUT PRIOR NOTICE TO A JUVENILE PROCEEDING AIMED AT DETERMINING WHETHER PETITIONER WAS THE PERPETRATOR OF SEXUAL ABUSE, VIOLATED PETITIONER'S CONSTITUTIONAL RIGHTS TO PROCEDURAL DUE PROCESS.

(SUGGESTED ANSWER IN THE AFFIRMATIVE)

II.

PARTIES IN PROCEEDING IN COURT OF FIRST INSTANCE:

Katherine Keslar, Natural Mother
Represented by Mary Ann Grec, Esquire
35 West Pittsburgh Street
Greensburg, PA 15601

Eugene Hunter, Natural Father of Michael Keslar
and Christy Hunter,
Represented by R. McCreary, Esquire
Maple Avenue
Greensburg, PA 15601

The Westmoreland County Childrens' Bureau
Represented by John Casario, Esquire
Westmoreland County Solicitor's Office
Westmoreland County Courthouse Annex
Greensburg, PA 15601

Guardian Ad Litem for the Children,
Diane Murphy, Esquire
15 East Otterman Street
Greensburg, PA 15601

Butch Brown, Natural Father of Michelle Keslar
Represented by James Robinson, Esquire
Coulter Building, Main Street
Greensburg, PA 15601

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VI.
STATEMENT OF JURISDICTION

The jurisdiction of the United States Supreme Court relative to Petitioner's Petition for Writ of Certiorari is conferred by 28 U.S.C.A. § 1257.

VII.

CONSTITUTIONAL AND STATUTORY PROVISIONS

U.S.C.A Const. Art. 1, § 10 (1):

No State shall enter into any Treaty, Alliance, or Confederation; grant Letter of Marque and Reprisal; coin Money; emit Bills of Credit; make any Thing but gold and silver Coin a Tender in Payment of Debts; pass any Bill of Attainder, ex post facto Law, or Law impairing the Obligation of Contracts, or grant any Title of Nobility.

U.S.C.A Const. Amend. 5:

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a

witness against himself, nor be deprived of life; liberty, or property, without due process or law; nor shall private property be taken for public use, without just compensation.

U.S.C.A Const. Amend. 14, Section 1:

All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny of any person within its jurisdiction the equal protection of the laws.

Pa. Const. Art. 1, Sect. 17:

No ex post facto law, nor any law impairing the obligation of contracts, or making irrevocable any grant of special privileges or

immunities, shall be passed.

Pennsylvania Crimes Code, 18 Pa.C.S.A. §3104 (Purdon 1983):

Evidence of victim's sexual conduct

(a) General Rule. - Evidence of specific instances of the alleged victim's past sexual conduct, opinion evidence of the alleged victim's past sexual conduct shall not be admissible in prosecutions under this chapter except evidence of the alleged victim's past sexual conduct with the defendant where consent of the alleged victim is at issue and such evidence is otherwise admissible pursuant to the rules of evidence.

(b) Evidentiary proceedings. - A defendant who proposes to offer evidence of the alleged victim's past sexual conduct pursuant to subsection (a) shall file a written motion and offer of proof at the time of trial. If, at the time of trial, the court determines that the motion and offer of proof are sufficient on

VIII.
STATEMENT OF THE CASE

A. Factual Background

For years, the alleged victim of sexual abuse, the fourteen year old step-daughter of the Petitioner (herein after referred to as the "step-daughter"), told one of her closest friends (Ms. Edra Shrader [hereinafter "Edra"]) that she hated her step-father (hereinafter "Petitioner") because he was "too strict". The step-daughter's dislike for Petitioner was so strong that she told her friend Edra that she wanted to "get revenge" on Petitioner.

In the early Spring of 1992, soon after the step daughter began seriously dating a new boyfriend, Edra began noticing changes in her friend's behavior. Within the first few months of the step daughter's relationship with the new boyfriend, Edra noticed that the step daughter became "more wild" and began talking about sex frequently.

During this same time period, the step

daughter began discussing her desire to live with her natural father who she considered to be "less strict" than Petitioner. Sometime in April or May of 1992, the step daughter asked permission of her mother and Petitioner to spend the upcoming summer with her natural father. Although permission was granted for her to spend a couple of weeks of the summer with her natural father, they denied her permission to spend the entire summer there.[1]

June 3, 1992, was the last day of school before summer vacation for the step daughter. That afternoon the Petitioner disciplined his step daughter for her failure to clean her room. As a result, she was forbidden from attending a dance which was to take place that night. That evening, the step daughter waited for her mother and Petitioner to go out to dinner and telephoned her boyfriend. She then immediately

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[1] Petitioner and the mother were concerned for the safety of the step daughter because of the lengthy mental health history of the natural father which included, *inter alia*, a suicide attempt involving dynamite during which law enforcement was called to his home, where his children were present, to intervene.

telephoned her natural father, telling him that the Petitioner had sexually abused her during the previous year (1991) and that she wished to be picked up so that she could live with her natural father. As a result, the natural father drove directly to the house and picked her up before the Petitioner and her mother returned home.

The step daughter alleged that the Petitioner engaged in sexual intercourse with her, including anal intercourse, on several occasions beginning in the Spring of 1991 and continuing until the holiday season of 1991.

Pursuant to these allegations, an extensive investigation was conducted by the Westmoreland County Childrens' Bureau. During the initial stages of the investigation, mother and Petitioner volunteered to be interviewed at length by the Childrens' Bureau authorities. Furthermore, mother and Petitioner agreed to leave the home for a short time so that the other children in the home could be freely

interviewed by Childrens' Bureau authorities. After concluding the initial investigation, the Childrens' Bureau found that the other children were not in danger and allowed the Petitioner and mother to continue to reside in the home. The step daughter was temporarily placed with her natural father.

Despite an extensive investigation, there was no evidence of sexual abuse outside of the testimony of the step daughter. In fact, a thorough medical examination was performed on the step daughter, but no evidence of sexual abuse was obtained. Moreover, the other children in the household testified at the underlying hearing that they observed nothing unusual about the relationship between Petitioner and the step daughter, although they were aware of the step daughter's contempt for the Petitioner because of his discipline.

Significantly, the step daughter never made any disclosure to her close friend, Edra Shrader, who herself was the victim of sexual

abuse. There were numerous occasions during the relevant time period (Summer of 1991 when Petitioner was allegedly abusing the step daughter) when painful disclosures were being made to the step daughter by Edra Shrader.[2] However, the step daughter never mentioned that she was then being sexually molested by Petitioner.

Nevertheless, as a result of the allegations of the step daughter, criminal charges were brought against both the Petitioner (rape related) and the mother (endangerment) for

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[2] In June of 1991, Edra Shrader began the difficult process of assisting the Commonwealth of Pennsylvania in the prosecution of her father for repeated and violent acts of sexual abuse.

Specifically, on June 28, 1991, Edra Shrader was required to testify against her father at his preliminary hearing. Traumatized by this experience, she began turning to Petitioner's step daughter for support.

On numerous occasions during the Summer of 1991 Edra Shrader privately shared with the step daughter the nature of the assaults she was forced to experience at the hands of her father, including anal intercourse. As she proceeded through the judicial process, Ms. Shrader continued to confide in the step daughter, sharing with her experiences related to her foster placement. Further discussions took place relative to the possible criminal sentences Ms. Shrader's father could face.

alleged sexual abuse.

B. Procedural Background

On or about, June 24, 1992, the Westmoreland County Childrens' Bureau filed a Petition for Dependence, which alleged, inter alia, that the Petitioner was the perpetrator of sexual abuse upon his step daughter.

On August 27, 1992, during the underlying Dependency Proceeding, the step daughter was called to testify by the Westmoreland County Childrens' Bureau. On cross-examination, counsel for Petitioner sought to explore matters relative to her sexual experiences. However, upon objection of the Childrens' Bureau, the lower court precluded any such inquiry into the step daughter's sexual experience, either through the step daughter or through the use of

any other witness.[3]

A Notice of Appeal was filed to the Pennsylvania Superior Court after the lower court found, by clear and convincing evidence and based entirely on the testimony of the step daughter, the Petitioner to be the perpetrator of sexual abuse (Appendix Page(s) A1-A3)[4]. The lower court ordered that a "Statement of Matters Complained of on Appeal be provided by Petitioner's counsel. In response, the lower court issued an Opinion on or about January 25,

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[3] Petitioner faced a criminal adjudication following the juvenile proceedings during which the criminal court heard a Motion in Limine (under Pennsylvania's Rape Shield Law) relative to testimony of the step daughter's sexual history. It was revealed that the step daughter had intercourse with her boyfriend, following the time period when she was allegedly abused by Petitioner, during which she admitted to being a virgin. Furthermore, the boyfriend testified that she bled on the bed sheets following intercourse. This testimony was found to be relevant to the issue of fabrication, which was the sole defense in the criminal case.

Following a jury trial, Petitioner was acquitted on all counts largely due to this testimony and corroborating medical testimony, none of which Petitioner was allowed to introduce during the abuse proceeding at issue.

[4] As a result of the lower court's ruling Petitioner has been required to reside outside of the home indefinately.

1994 (Appendix Page(s) A4-A17) in which Petitioner became aware, for the first time, of the Court's application of the procedures set forth in the Pennsylvania Rape Shield Law, requiring, inter alia, a *Motion in Limine* to determine the relevancy of the step daughter's sexual experiences to the abuse proceedings.[5]

[5] See Footnote #3.

IX.

ARGUMENT

I. WHETHER THE THE TRIAL COURT'S RETROACTIVE APPLICATION OF THE PENNSYLVANIA RAPE SHIELD LAW, WITHOUT PRIOR NOTICE TO A JUVENILE PROCEEDING AIMED AT DETERMINING WHETHER PETITIONER WAS THE PERPETRATOR OF SEXUAL ABUSE, VIOLATED PETITIONER'S CONSTITUTIONAL RIGHTS TO PROCEDURAL DUE PROCESS.

The lower court's retroactive application of the procedures set forth in the Pennsylvania Rape Shield Law to a dependency adjudication under the Pennsylvania Juvenile Act, without alerting Petitioner to the fact that such procedures were required, violated the Petitioner's federal constitutional right to due process.

The Westmoreland County Childrens' Bureau filed a Petition alleging that the step daughter was the victim of sexual abuse. Although requested by Petitioner, the lower court refused to allow Petitioner any inquiry into the alleged victim's sexual experiences in order to

establish Petitioner's defense of fabrication.[1]

The inquiry that was requested by Petitioner relative to the alleged victim's sexual activity was made for two reasons. First, Petitioner was seeking to elicit testimony regarding the alleged victim's ongoing sexual relationship with her boyfriend in an effort to establish fabrication on the part of

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1 The lower court summarily dismissed any inquiry as irrelevant. The court refused to hear counsel's arguments on why such should be allowed. Additionally, counsel was precluded from calling the alleged victim's teenage boyfriend to the extent calling him was aimed at eliciting information regarding his sexual relationship with the alleged victim.

In the fall of 1993, Petitioner faced a criminal adjudication following the juvenile proceedings during which the criminal court heard a Motion in Limine (under Pennsylvania's Rape Shield Law) relative to testimony of the step daughter's sexual history. It was revealed that the step daughter had intercourse with her boyfriend, <u>following the time period when she was allegedly abused by Petitioner, during which she admitted to being a virgin.</u> Furthermore, the boyfriend testified that she bled on the bed sheets following intercourse. This testimony was found to be relevant to the issue of fabrication, which was the sole defense in the criminal case.

Following a jury trial, Petitioner was acquitted on all counts largely due to this testimony and corroborating medical testimony, none of which Petitioner was allowed to introduce during the abuse proceeding at issue.

the alleged victim. It is the Petitioner's contention that part of the motivation behind the step daughter's fabrication of the allegations stemmed from the fact that the step daughter was restricted for defiant behavior and that such restriction interfered with her ability to meet with her boyfriend. Secondly, Petitioner sought to explore the step daughter's sexual experience to establish an independent basis for her knowledge of sexual acts and terms and the experiences she described when claiming to be the victim of sexual abuse.

The lower court made no effort to inquire into the information sought to be elicited to determine its relevancy. To the contrary, in its Opinion, the lower court cites to Petitioner's failure to abide by the procedures set forth in the Pennsylvania Rape Shield Law. However, Petitioner was never notified that such procedural requirements were applicable. Moreover, had Petitioner been on notice he would have undoubtedly objected to the court's

pplication of the Rape Shield Law to a juvenile roceeding as the statute specifically rticulates that it is to apply only to criminal roceedings.

The Pennsylvania Rape Shield Law, rovides::

Evidence of victim's sexual conduct

(a) General Rule. - Evidence of specific instances of the alleged victim's past sexual conduct, opinion evidence of the alleged victim's past sexual conduct shall not be admissible in prosecutions under this chapter except evidence of the alleged victim's past sexual conduct with the defendant where consent of the alleged victim is at issue and such evidence is otherwise admissible pursuant to the rules of evidence.

(b) Evidentiary proceedings. - A defendant who proposes to offer evidence of the alleged victim's past sexual conduct pursuant to subsection (a) shall file a written motion and offer of proof at the time of trial. If, at the time of trial, the court determines that the motion and offer of proof are sufficient on their faces, the court shall order an in camera hearing and shall make findings on the record as to the relevance and admissibility of the proposed evidence pursuant to the standards set forth in subsection (a).

Pennsylvania Crimes Code, 18 Pa.C.S.A. §3104 (Purdon 1983).

The issue in this case it not whether there was a proper interpretation of the substance of the Rape Shield Law at the underlying abuse proceedings. That issue has already been resolved by the Pennsylvania Superior Court when holding that, to the extent the lower court relied on this statute, such reliance was misplaced[2]. The issue here is whether the lower court's retroactive application of the procedures set forth in the Rape Shield Law to determine the relevancy of the alleged victims past sexual experiences violated Petitioner's Constitutional Due Process Rights.

The questions of whether the Petitioner has a protected interest sufficient to activate due process protections was answered, though

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[2] In re M.K. ___ Pa. Super. ___, 636 A.2d 198, 203 (1994).

indirectly, by the Pennsylvania Superior Court when evaluating Petitioner's standing to appeal the lower court's abuse determination. In so holding, the Pennsylvania Superior Court noted:

> ...Appellant was a... subject of the trial court's order as the trial court's adjudication directly affected his rights by court order. Specifically, the court ordered that appellant was to have no contact with the children until he fully completed a program of the "Perpetrator's Group" and that the Children's Bureau was to arrange for him to have drug and alcohol counseling. *These directive implicitly require appellant to undergo rehabilitation and they are presumably enforceable sanctions.* Furthermore, we believe it significant, although not dispositive of the question of standing, that appellant has been in a long term relationship with the mother in that he has been living with the mother and the three minor children for a period in excess of six years. Under these circumstances, appellant has a substantial, direct and immediate interest in the outcome of this case. (Emphasis Added).

In re M.K., ___ Pa. Super. ___, ____, 636 A.2d 198, 200 (1994).[3]

As a result of the lower court's ruling,

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3 See also, Weller v. Dept of Soc. Serv. For Baltimore, 901 F.2d 387 (4th Cir 1990) (Court of Appeals held that father's interest in custodial care of children by agency a suffieicnt lliberty interest to satifsy hurdle leading to due process protections).

Petitioner was required to live outside of the household.[4] The entire family structure was torn apart the family being Petitioner's liberty interest.

It has been held that when determining the adequacy of procedures relative to constitutional protections, the could "must consider the interest at stake for the individual, the risk of an erroneous deprivation of the interest through the procedures used as well as the probable value of additional or different procedural safeguards, and interest of the government". Complaint of Bankers Trust Co., 752 F.2d 874 (1984), citing, Marroquin-Manriquez v. Immigration and Naturalization Service, 699 F.2d 134 (3rd Cir. 1983).

The Pennsylvania Rape Shield Law is, by its very language, not applicable to juvenile proceedings, whether by substances or procedure. The plain language of the Rape Shield Law, 18

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[4] Note, that since that time, altough Petitioner continued to reside outside of the home, he married the mother and the have given birth to baby boy. Hence, the significance of Petitioner's liberty interest relative to the family are more currently magnified.

the alleged victim's past sexual conduct shall not be admissible in prosecutions *under this chapter* (the Pennsylvania Crimes Code)..." 18 Pa.C.S. § 3104(a).

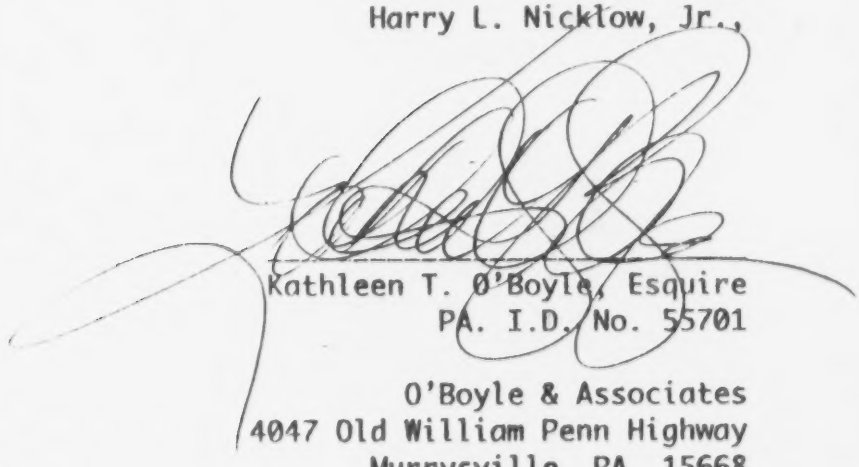
Although there was no authority for the lower court's application of the procedures set forth in the Pennsylvania Rape Shield Law to the Petitioner's abuse hearing, Petitioner notes that even is such application of the procedural requirement set forth in the act were appropriate, Petitioner must have been notified of the procedural requirements prior to being prejudiced by failing to follow them.

In sum, the lower court's retroactive application of the procedures set of the Pennsylvania Rape Shield Law violates fundamental notions of fairness and due process.

CONCLUSION

Wherefore Petitioner, Harry L. Nicklow, Jr. requests this Honorable Court vacate the Order of the Court of Common Pleas of Westmoreland County, Commonwealth of Pennsylvania dated October 26, 1992, and grant such other and further relief as this Court deems appropriate.

RESPECTFULLY SUBMITTED,
COUNSEL FOR PETITIONER,
Harry L. Nicklow, Jr.,



Kathleen T. O'Boyle, Esquire
PA. I.D. No. 55701

O'Boyle & Associates
4047 Old William Penn Highway
Murrysville, PA 15668

Phone:(412) 733-5040
Fax:(412) 733-5041

Dated: August 8, 1994

IN THE COURT OF COMMON PLEAS OF WESTMORELAND COUNTY, PENNSYLVANIA

JUVENILE DIVISION

IN THE INTEREST OF:	)	
	)	
MICHAEL KESLAR	)	NO. 58 WCCB 1992
BORN: 4-8-77	)	
CHRISTY HUNTER	)	
BORN: 8-19-78	)	
MICHELLE KESLAR	)	
BORN: 5-10-83	)	

ORDER OF COURT

AND NOW, TO WIT, this 26th day of October, 1992, after consideration of the petition filed on behalf of the Westmoreland County Children's Bureau and after hearing thereon, the following Order is hereby entered:

1. The the minor children Michael Keslar, Christy Hunter and Michelle Keslar are hereby declared dependent children since they are without proper parental care and control necessary for their physical, mental, and emotional health and morals, and further, that the minor child Christy Hunter is further dependent founded upon sexual abuse by the mother's paramour Harry Nicklow;

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2. That the said minor children Michael Keslar, Christy Hunter, and Michelle Keslar are hereby awarded into the custody of the Westmoreland County Children's Bureau with placement in foster care;

3. That the Westmoreland County Children's Bureau provide sexual abuse counseling for the minor child Christy Hunter;

4. That the natural mother and the natural fathers of the above children are afforded supervised visits at the office of the Westmoreland County Children's Bureau;

5. That the said Harry Nicklow have no contact with the minor children until he has fully completed the program of the Perpetrator's Group;

6. The Westmoreland County Children's Bureau offer to the natural mother counseling through a mother's group for victims;

7. That the Westmoreland County Children's Bureau arrange psychological counseling for both the natural mother and Michael Keslar and Michelle Keslar;

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8. That Eugene Hunter continue his mental health counseling until discharged;

9. That the Westmoreland County Children's Bureau arrange drug and alcohol counseling for the natural mother and Harry Nicklow;

10. That reasonable efforts were made by the Westmoreland County Children's Bureau to prevent placement of the minor children;

11. That the Westmoreland County Children's Bureau have case management responsibility for the minor children while said children remain in placement;

12. That the Westmoreland County Children's Bureau and the foster parents are authorized to obtain whatever medical or dental care may be necessary for the care and treatment of the minor children.

BY THE COURT:

/s/Charles E. Marker
Charles E. Marker,
President Judge

A3

IN THE COURT OF COMMON PLEAS OF WESTMORELAND COUNTY, PENNSYLVANIA

JUVENILE DIVISION

IN THE INTEREST OF:	)	
	)	
MICHAEL KESLAR	)	NO. 58 WCCB 1992
BORN: 4-8-77	)	
CHRISTY HUNTER	)	
BORN: 8-19-78	)	
MICHELLE KESLAR	)	
BORN: 5-10-83	)	

OPINION

This case in an appeal to the Superior Court of Pennsylvania from an Order of October 26, 1992 adjudicating the above named children dependent and further adjudicating the minor child, Christy Hunter, dependent founded upon sexual abuse by her mother's paramour, Harry Nicklow, Jr. Harry Nicklow, Jr., and the natural mother have both filed appeals.

As a result of a report of Child Abuse the Westmoreland County Children's Bureau filed a Petition under the Juvenile Act, 42 Pa.C.S.A. 6301, et seq., and the Child Protective Service Law, 23 Pa.C.S.A. 6301, et. seq.

A review of the testimony as this Court

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found it is warranted.

Matt Stromberg testified at the first scheduled hearing on July 13, 1992 as an expert in the field of psychology. He tested and interviewed Christy Hunter on June 24, 1992 and saw her twice thereafter. The child told him that she was sexually assaulted by the appellant, Harry Nicklow, Jr., at two different locations over the period of about one year. She told him that the sexual contact began with touching and progressed to intercourse beginning when she was in the seventh grade during hot weather and ending around last Christmas after her mother found him in her bedroom when neither she or he had clothes on. (r. 75). Subsequent to that she said that there was increased physical abuse and contact with appellant Nicklow. She told the psychologist that she did disclose this to her father, but had not done so earlier because she was concerned for her mother. The psychologist found that the child had fragile self-esteem (r.55). She had made one suicide attempt (r.48). She feels more

positively toward her father, and does not want to live with her mother even if appellant Nicklow were not in the home (r.80). Counsel for mother and for alleged perpetrator objected to Stromberg's testimony as hearsay. (r.10). Counsel for the Westmoreland County Children's Bureau requested that the psychologist be called first to testify out of order because he was present and it was late in the day and because he had an appointment at his office at 4:30 P.M. that day. The attorney explained that he intended to call the child first and follow up with the psychologist Stromberg, but based on the time of day, requested that he be taken out of order, assuring that the testimony of the child would follow.

At the next scheduled hearing on August 27, 1992, the minor child, Christy Hunter, age 14 and in the ninth grade, testified. She explained that she had lived with her mother, Harry Nicklow, Jr., her brother Mike, sister Michelle and uncle Kevin until June 3, 1992 when she went to live with her father Eugene Hunter.

Christy testified that appellant, Harry Nicklow, Jr., had been living in the home as her mother's boyfriend for several years. She testified that he was having sexual intercourse with her starting toward the end of seventh grade when it was hot outside (r.12). It began with tickling and then touching her private areas and coming into her room. It happened a lot of time but not every day. It happened most often early in the morning or in the late evening after he and her mother came back from drinking and her mother went to sleep. Christy said she told him to stop, but he said he could not because if he did not ejaculate, his doctor would have to drain his penis with a needle. She did not tell anyone, because she did not want to hurt her mother or because her mother might not believe her. Appellant Nicklow told her she looked better than her mother because her mother was fat and just laid there (r.29). Two or three times appellant Nicklow put his penis in her butt (r.35). When Nicklow came into her room, he closed the door to Michelle's room across the

hall (r.46). One time, her brother Michael came by when appellant Nicklow was touching her, but Nicklow told him that he was tickling her (r.46). She said that Nicklow often wore just his underwear around the house (r.31). She testified that he finally stopped abusing her when her mother saw him abuse her (r.16). That occurred in the winter of eighth grade in the morning before school. Immediately after that, mother asked her if she wanted Nicklow to leave, but she knew mother was hurt enough so she said, "no" (r.28). Appellant Nicklow said at that time he needed help, but never did seek help to her knowledge. Later, her mother called her names and said it was her fault (r.17). Christy said she let her mother believe whatever appellant Nicklow wanted to tell her. They told her not to tell anybody because they would get in trouble and to jail (r.20). They made her promise not to tell (r.21). One time after mother found appellant Nicklow in her room, he tried again to have sexual contact with her but he was drunk and fell down a couple of times so

she was able to avoid him by going into Michelle's room (r.18,33). Christy said after her mother knew, there were many arguments among the three of them and physical violence directed to her (r.23). Christy testified that mother and appellant Nicklow drink alot and "could have started a bar down the cellar" (r.30). The children were left alone when the mother and Nicklow went out to drink once or twice a week. One time when appellant Nicklow came home drunk, he shot a gun through the kitchen ceiling into the minor child, Michael's bedroom. She said the bullet would have hit Michael, but instead went through his television set. Christy said that about one year ago, she started asking to see her father, but appellant Nicklow did not want her to, so her mother would tell her to wait until appellant Nicklow was at work. Christy first told about the abuse to her boyfriend and he told her to tell her natural father.

Patricia Hall testified that she dates Nicklow's father and has known Christy and her

mother for 3-1/2 years. She testified that the mother, Kathy Keslar, called her last fall around late October and said she found Christy and Nicklow in bed together naked (r.201). She said the mother asked her if she thought Nicklow's father or mother had molested him (r. 211). She thought this phone call with mother was around October 21st because it was when appellant-Nicklow was hunting. She said mother told her if Hall told anyone about this call she would deny the conversation.

Michael Keslar is age 15 years and in the tenth grade. He said his sister Christy told him that Harry Nicklow, Jr. molested her and that she couldn't stand it anymore (r.94). He said that Christy for a long time said she hated Nicklow (r.128). Michael said Harry often walked around in his underwear (r.116). He said everyone slept upstairs except Christy and Michelle. He said his mother and Nicklow drink occasionally. One night he went to bed while his mother and Nicklow were out hunting. He heard them come in and then heard a fire cracker

sound. Appellant Nicklow came running up to his room. He learned that a gun had gone off and a bullet went through the floor under his bed through the television (r.103). He said his mother and appellant Nicklow had arguments between themselves but could not say how often. He testified that his mother and Nicklow do drink alcohol (r.101) at home and sometimes outside the home. He said he did not know if they were drinking the night the gun went off. Michael said that uncle Gradish has lived in the home for a few months since he got out of jail, but did not know what he was in jail for. Christy had told him for a long time she hated Nicklow and her mother (r.128). He said that there were a lot of fights among them.

The caseworker, Annette Gross, testified. Both appellants admitted to drinking and appellant Nicklow admitted that sometimes he drank to the point that he needed help walking (r.156). The minor child Christy Hunter indicated to the case worker that appellant Nicklow molested her beginning in the spring of

seventh grade until December, 1991. She indicated that subsequent to disclosure, mother was questioning her about it (r. 170) and the child is angry at her mother for being nonsupportive of her.

Eugene Hunter, natural father of Christy and Michael testified. He has maintained contact with Christy. She called and told him that appellant Nicklow was having sex with her and that her mother had walked in on it, but did nothing. On receipt of that call, he went and got Christy. He said that appellant Nicklow had interfered with his relationship with both of the children (r.223). He had concerns about his ex-wife's brother, who was living in the home at that time. He did not want him around the children, because in the past, he had caught him molesting his teen-age sister (r.220). He learned that she was drinking on one occasion and she had also skipped school. He admitted he had mental health problems and that he is currently in treatment.

David Poskus, a licensed social worker,

testified that he has been treating natural father, Eugene Hunter, since December, 1990 for suicidal ideation. He said that Mr. Hunter has been fighting depression for a long time and requires continued treatment. He anxiety has increased regarding the situation with Christy and he has begun to use alcohol to help him get to sleep. Although Mr. Hunter has generally been doing well, Mr. Poskus has some concern for his care taking ability in that regard. (r.255).

Although called as witnesses, both the appellant mother and the appellant Nicklow refused to testify, invoking their Fifth Amendment rights under the Constitution.

Following adjudication and disposition by the Court, the appellant mother and appellant Nicklow filed their appeal.

This Court, being uncertain as to the reasons for the appeal, directed the appellants, in accordance with the Rules of Appellate Procedure, to file concise reasons for the appeals.

The appellant mother has filed to file

with the Court any reasons for the appeal although ample time was afforded to her in the Order of this Court.

Appellant Nicklow raised five reasons for his appeal.

The first and second contentions will be considered together because appellant Nicklow claims that this Court erred in finding clear and convincing evidence that he was the perpetrator of sexual abuse, and insufficient evidence existed to establish that the minor, Christy Hunter, was the victim of sexual abuse.

This action was brought by the Westmoreland County Children's Bureau (hereinafter referred to as Petitioner), under the Juvenile Act, 42 Pa. C.S.A. Section 6301, et seq., and the Child Protective Service Act, 23 Pa. C.S.A, Section 6301, et seq. Sexual abuse is defined in Child Protective Service Law as:

> "The obscene or pornographic photographing, filming, or depiction of children for commercial purposes, or the rape, molestation, incest, prostitution or other forms of exploitation of children under circumstances that indicate that a child's health or welfare is harmed or

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threatened thereby as determined in accordance with regulations of the department." 23 Pa.C.S.A. 6303

Child abuse as defined in the Act includes sexual abuse and sexual exploitation when caused by acts or omissions of the child's parents or by persons responsible for the child's welfare, or by any individual residing in the same home as the child, or a paramour of the child's parent. 23 Pa. C.S.A. Section 6303.

The minor child here testified that appellant Nicklow lived in her home and he was her mother's boyfriend. Her siblings likewise testified that Nicklow lived in their home. He was, therefore, an "individual residing in the same home as the child", and a "paramour of the child's parent", and acts of sexual abuse by him meet the definition of child abuse under Child Protective Service Law. Christy Hunter testified as to acts of rape, molestation, and other forms of sexual exploitation over a period of about a year. She identified appellant Nicklow as the perpetrator of those acts. The

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child described a progression of sexual acts beginning with fondling and leading to vaginal and anal intercourse. She detailed comments made to her by appellant Nicklow in the commission of those acts. The child's testimony was consistent through cross-examination by five attorneys. Her testimony was consistent with statements she previously made to a caseworker and psychologist who both testified. Christy testified that her mother walked in on an act of abuse of her by appellant Nicklow. Patricia Hall testified that appellant mother (Katherine Keslar) told her about that incident in a phone conversation with her. This Court found Christy Hunter to be credible, and, therefore, found by clear and convincing evidence that she was the victim of sexual abuse perpetrated by appellant Nicklow. Pure and simple, this Court believed the minor child. Upon observing this child, she graphically articulated the sexual abuse perpetrated on her by appellant Nicklow.

Appellant Nicklow next contends that this Court erred in allowing a psychologist to

testify that the victim was being truthful when discussing abuse with him and admitting the psychologist's testimony as substantive evidence. The psychologist was called as a witness by the petitioner, the Westmoreland County Children's Bureau. He had evaluated the child at the request of the petitioner. Part of his testimony was presented as an exception to the hearsay rule so that statements made to him by the child about the sexual abuse would be admissible. The petitioner intended to take the testimony of the minor child first, but due to time factors, took the psychologist testimony out of order (r.23-30). The psychologist was also to testify to the psychological condition of the child and treatment recommendations (r.27). The psychologist testified that the child was referred to him by the petitioner but that no specific reason for the referral was given to him by the petitioner. Rather he received that information from the minor child herself (r.19). He did not, in his testimony, state that he believed the child to be truthful,

but he did testify that she was a child in need of continued treatment with saddened affect, depression, fragile self-esteem, and that she was minimizing the damage to herself in attempting to protect family members (r.51-52). Only the appellant Nicklow's counsel asked the psychologist if responses to particular tests indicated that Christy was demonstrating responses typically found in abused children. To that he responded that Christy's responses were "certainly consistent" (r.62). The psychologist's testimony consisted of his clinical observation of the child's affect, his professional assessment of her psychological condition and statements made about sexual abuse by appellant Nicklow.

> "A statement made by a child describing acts of indecent contact, sexual intercourse or deviate, sexual intercourse preformed with or on the child by another, not otherwise admissible by statue or court ruling, is admissible in evidence in a dependency proceeding initiated under Chapter 63 [relating to juvenile matter], involving that child or other members of that child's family, if the court finds that the time, content, and circumstances of this statement provide sufficient indicia of reliability.

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42 Pa.C.S.A. Section 5986.

Hearsay evidence regarding the evaluation of a psychologist and a foster mother of two allegedly abused children was properly admitted in, In Re: A.M. and P.M., 530 A.2d 430 (1987). There the psychologist testified about the child's preoccupation with sexual themes and his response to a form. Likewise the Court, In the Interest of Tina K., 390 Pa. Super. 94, 568 A.2d 210 (1989) held that the hearsay exception may be invoked when the appearance of the child would cause trauma to the child, or ". . .following the presentation of testimony from the child as a witness, the statements of the child are admissible as substantive and/or corroborative evidence". Tina K., supra, 215. Here the child was a witness, her testimony was consistent in Court with the statements she had made out of Court to the psychologist. The testimony of the psychologist was properly admitted.

Lastly, appellant Nicklow contends that the evidence of the victim's prior sexual

activity should have been allowed to establish an independent basis for her knowledge of sexual acts.

Pennsylvania Rape Shield Law is codified at 18 Pa. C.S.A. Section 3104. Evidence of specific incidents of the victim's past sexual conduct is not admissible except to try to show consent with a defendant. Further, a defendant who proposes to offer evidence of the alleged victim's past sexual conduct must file a written motion and an offer of proof at the time of trial at which time the trial court may conduct an in camera hearing regarding the relevance and admissibility of the proposed evidence. No such pretrial motion was presented to this Court.

For an exception to be allowed to the Rape Shield Law an adequate and specific proffer must be made and found to be relevant, more probative than prejudicial, and not nearly cumulative of other unprivileged impeachment or rebuttal evidence. Commonwealth v. Nieves, 582 A.2d 341 (1990). In Commonwealth v. Appenzeller, 565 A.2d 170 (1989), evidence of a prior sexual

assault of a three year old was held irrelevant to a defense effort to show a source for knowledge of sexual activity because the child's credibility was never under attack as to the identification of the attacker. Evidence to show that the victim's credibility was effected by bias against or hostility toward the defendant, or a motive to seek retribution, has been allowed but even then evidence of prior sexual acts is excluded when the defendant has ample alternative means to attack the victim's credibility, Commonwealth vs. Smith, 599 A.2d 1340 (1991).

Although the Rape Shield Law is applicable to criminal proceedings, the theory of that law appears to apply here to prohibit admission of prior sexual conduct of this victim. Inquiry into the victim's sexual activity was properly excluded even if the Rape Shield Law was to apply only to criminal cases. The issue of the victim's prior sexual activity is not relevant on the issue of whether the appellant Nicklow mistreated the minor child. She was thoroughly

cross-examined and her credibility was challenged, and she clearly identified the perpetrator and this Court found the victim to be competent and credible.

In accordance with said opinion, the Court issued the following order.

M.K. BORN: 4/8/77,	)	IN THE SUPERIOR
C.H. BORN: 8/18/78,	)	COURT OF
M.K. BORN: 5/18/83,	)	PENNSYLVANIA
MINOR CHILDREN,	)	
	)	
APPEAL OF:	)	No. 1815 Pgh 1992
HARRY NICKLOW, JR.	)	

Appeal From the ORDER Entered October 26, 1992
In the Court of Common Pleas, JUVENILE Division,
Westmoreland County, No. 58 WCCB 1992

BEFORE: CAVANAUGH, KELLY and BROSKY, JJ.

OPINION BY CAVANAUGH, J.: FILED: JANUARY 5, 1994

Harry Nicklow, Jr. appeals from the order of the Court of Common Pleas of Westmoreland County which, inter alia, adjudicated the minor child C.H. dependent, issued a finding that she had been sexually abused and named Nicklow, the paramour of the child's mother, the perpetrator of this abuse. We affirm.

The Westmoreland County Children's Bureau ("Children's Bureau") filed a petition, on or about June 24, 1992, alleging that Nicklow had been sexually abusing C.H. on an ongoing basis for the past year and a half and that the child's natural mother was aware of this abuse

and did not take appropriate action to safeguard her thirteen year old daughter. The petition further alleged that all three of the mother's minor children, M.K., C.H. and M.K., were without the proper parental care or control or other care or control necessary for their physical, mental or emotional health or morals. The court ordered a hearing and testimony was subsequently taken on six separate days from mid-July through mid-October. All interested parties were given the opportunity to testify.[1] On October 26, 1992, the court entered an order which, inter alia, adjudicated the three minor children dependent based on the finding that they were without the proper parental care and control necessary for their physical, mental and emotional health and morals and that C.H. was further dependent based on the finding that she had been sexually abused by her mother's paramour, Harry Nicklow. Following this

[1] At the time Nicklow was called to testify, criminal charges stemming from the alleged sexual abuse of C.H. were pending against him. Nicklow took the stand but refused to testify, invoking his rights under the Fifth Amendment to the Constitution of the United States. We note that Nicklow was represented by counsel at this proceeding.

adjudication, Nicklow filed this appeal.

Before we may turn our attention to the issues raised in this appeal, we must first determine whether a natural mother's paramour has standing to appeal an order adjudicating her child dependent, when this adjudication is based upon the trial court's finding that the paramour sexually abused the child. Recently, in the case of In the Interest of Garthwaite, 422 Pa. Super. 280, 619 A.2d 356 (1993), we held that the boyfriend of a child's natural mother lacks standing to appeal an adjudication of that child's dependency. The facts of Garthwaite, however, are distinguishable from those of the case at bar. In Garthwaite, we reasoned that a live-in boyfriend lacked standing because his interest in the trial court's determination was remote and not immediate; the boyfriend was not the parent, guardian or custodian of the minor child, he was not a party to the dependency proceeding and his interests were not

represented therein.[2] Garthwaite, supra at 284-85, 619 A.2d at 358. We view with significance, that in Garthwaite: (1) no formal adjudication was made that the mother's boyfriend was guilty of abusing the child,[3] and (2) the trial court's adjudication had no direct consequences to the mother's boyfriend.[4] Garthwaite, supra at 282-

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[2] With respect to standing, our supreme court has explained:

> [T]o have standing, party must; (a) have substantial interest in the subject matter of the litigation; (b) the interest must be direct; and (c) the interest must be immediate and not a remote consequence.
>
> A "substantial" interest in an interest in the outcome of the litigation which surpasses the common interest of all citizens in procuring obedience to the law. A "direct" interest requires a showing that the matter complained of caused harm to the party's interest. An "immediate" interest involves the nature of the causal connection between the action complained of and the injury to the party challenging it, and is shown where the interest the party seeks to protect is within the zone of interest sought to be protected by the statute or constitutional guarantee in question.

Garthwaite, supra at 283, 619 A.2d at 357-358; quoting South Whitehall Township Police Serv. v. South Whitehall Township, 521 Pa. 82, 86-87, 555 A.2d 793, 795 (1989) (citations omitted).

[3] Although the trial court found that the mother and boyfriend were the perpetrators of the physical abuse, the court conceded in its subsequent opinion that it had been unable to determine whether the boyfriend had inflicted physical abuse on the child.

[4] It appears that the mother's boyfriend did not have the opportunity to litigate the issue of abuse before the trial court and that the trial court's order did not invade nor infringe upon his rights.

84, 619 A.2d at 357-58.

Here, the trial court made a direct finding of appellant's complicity in the acts of sexual abuse. Appellant was also a de facto subject of the trial court's order as the trial court's adjudication directly affected his rights by court order. Specifically, the court ordered that appellant was to have no contact with the children until he fully completed a program of the "Perpetrator's Group" and that the Children's Bureau was to arrange for him to have drug and alcohol counseling. These directives implicitly require appellant to undergo rehabilitation and they are presumably enforceable by sanctions. Furthermore, we believe it significant, although not dispositive of the question of standing, that appellant has been in a long term relationship with the mother in that he has been living with the mother and her three minor children for a period in excess of six years. Under these circumstances, appellant has a substantial, direct and immediate interest in the outcome of this case.

See note 2, supra. Therefore, we conclude that he has standing to bring this appeal.

Three issues have been raised by appellant for our consideration:

> (1) Whether the Lower Court's capricious disregard of credible evidence which clearly demonstrated the alleged victim's motivation to fabricate claims of sexual abuse against Appellant constitutes an abuse of discretion?
>
> (2) Whether the Lower Court committed an error of law and/or abused it discretion in allowing the hearsay statements of the alleged victim to come in as substantive evidence through the testimony of the alleged victim's psychologist?
>
> (3) Whether the Lower Court committed an error of law and/or abused it discretion in prohibiting Appellant's inquiry into the alleged victim's bias against Appellant and an independent basis for her knowledge of sexual terms and sexual acts?

With regard to his first issue, appellant argues that the trial court ignored the testimony of Adra Shrader, a teenage friend of the alleged victim. He maintains that her testimony was highly credible and that it demonstrated the alleged victim's strong motivation to fabricate claims of sexual abuse

against him. Appellant points out that the trial court did not mention this witness' testimony in its opinion and thereby concludes that the trial court ignored it entirely. We cannot agree.

With respect to our scope of review in dependency cases, we have stated:

> The standard of review which this Court employs in dependency cases is broad. However, the scope of our review is limited in a fundamental manner by our inability to nullify the fact-finding of the lower court.. We accord great weight to this function of the hearing judge because he is in the position to observe and rule upon the credibility of the witnesses and the parties who appear before him. Relying on this unique posture, we will not overrule his findings if they are supported by competent evidence.

In Re Frank W.D., 315 Pa. Super. 510, 517, 462 A.2d 708, 711 (1983).

Here, the substance of the testimony which appellant highlights to establish a strong motivation to fabricated, consists of Adra Shrader's testimony that C.H. said she hated appellant because he was too strict, that she wanted to get revenge on appellant and that she

wanted to stay with her natural father because he was less strict than appellant. Appellant also highlights the fact that this witness was herself a victim of sexual abuse and that she confided in C.H. the details of this abuse.

The mere fact that Adra Shrader's testimony was not mentioned in the trial court's opinion does not mean that it was not considered by the trial court. C.H. testified that appellant had sexually abused her numerous times over a period of approximately one year. The testimony of Adra Shrader does not directly contradict this testimony. It simply provides a basis from which the trial court may draw an inference the C.H. fabricated her claims of sexual abuse. The trial court specifically stated in its opinion that it found C.H.'s testimony to be credible. Implicit in this finding is a rejection of appellant's claims of fabrication. The trial court found that C.H. had been sexually abused by appellant and this finding is supported by the record. We will not overrule the findings of the trial court if they

are supported by competent evidence. See Frank W.D., supra. As such appellant's first issue is without merit.[5]

Appellant's second issue concerns the testimony of a psychologist who spoke to C.H. regarding her allegations of sexual abuse. The psychologist's testimony contained statements by C.H. which described the acts of sexual abuse allegedly perpetrated by appellant. It is appellant's position that the trial court either committed an error of law or abused its discretion in admitting these statements through the testimony of the psychologist because they are inadmissible hearsay.

In allowing the psychologist to testify about the statements made by C.H., the trial court relied on a statutory exception to the hearsay rule, codified at 42 Pa.C.S.A. § 5986.

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[5] We note that the only authority cited by appellant with respect to this issue, Beneshunas v. Independence Life & Acc. Ins., 354 Pa. Super. 391, 512 A.2d 6 (1986), is completely inapposite. In Beneshunas, we held that the trial court abused it discretion when it failed to reopen the case for further testimony where this testimony would be taken in the interest of a more accurate adjudication. Here, the testimony of the witness in question was admitted. Thus, Beneshunas does not even remotely support appellant's position.

This section reads:

> A statement made by a child describing acts of indecent contact, sexual intercourse or deviate, sexual intercourse preformed with or on the child by another, not otherwise admissible by statute or court ruling, is admissible as evidence in a dependency proceeding initiated under Chapter 63 [relating to juvenile matter], involving that child or other members of that child's family, if the court finds that the time, content, and circumstances of this statement provide sufficient indicia of reliability.

Id.

Appellant initially contends that this exception is not applicable in this case. He proffers two arguments in support of his position. First, he argues that the exception is only applicable when the actual appearance of the victim as a witness would cause trauma to the child, that there has been no finding of trauma in this case and therefore the hearsay statements of the child should not have been admitted. To support his contention, appellant relies on In the Interest of Tina K., 390 Pa. Super. 94, 568 A.2d 210 (1989). This case, however, does not support appellant's position.

In Tina K., we held, that with respect to the applicability of § 5986, a showing of trauma was required only when the child does not testify. Id. Here, C.H. testified. Thus, a finding of trauma was not necessary. Appellant's argument is meritless.

Appellant's second argument is that the exception only applies to cases which involve expungement proceedings where the victim is very young. He points out that the proceedings in this case involved dependency and the C.H. was thirteen years old when she testified. Therefore, appellant contends, C.H.'s statements should not have been admitted through the testimony of the psychologist. Appellant's assertion is incorrect.

The plain language of § 5986 unequivocally states that the hearsay statements of a child victim are "admissible evidence in a dependency proceeding." See Freeze v. Donegal Mut. Ins. Co., 412 Pa. Super. 305, 312, 603 A.2d 595, 598 (1992) (when construing a statute, a court must follow the letter of the statute if its words

are unambiguous). Furthermore, while the exception has been applied in expungement proceedings, it has been applied in dependency proceedings as well. See Tina K. supra; In re A.M., 365 Pa. Super. 516, 530 A.2d 430 (1987) (hearsay statement of child were properly admitted under 42 Pa.C.S.A. § 5986 in proceeding to determine dependency).

With respect to appellant's contention that the exception only applies to very young children, appellant has cited no authority, and we are aware of none, which limits the exception to cases where the victim is very young. See generally In re A.M., supra (foster mother allowed to testify about statements of sexual abuse made to her by both eight year old child and eleven year old child).[6]

Next, appellant contends that even if the

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6 We note that the only case cited by appellant, to support his assertion that the exception only applies to expungement cases where the child is very young, is A.Y. v. Dept. of Public Welfare, ___ Pa. Cmwlth. ___, 583 A.2d 515 (1990) alloc. granted ___ Pa. Cmwlth. ___, 588 A.2d 915 (1991). This case does not appellant's contention. Although A.Y. was an expungement case and the victim was three years old, there is no indication that the application of the exception is limited to these circumstances.

exception is applicable in this case, the trial court committed a clear error of law by allowing the psychologist to testify about the acts of abuse described to him by C.H., prior to C.H. herself testifying about the acts of abuse. Appellant, however, has failed to point to any authority which supports his argument, "As a general rule, the order in which evidence is received is vested in the sound discretion of the trial judge, whose exercise thereof will not be disturbed in the absence of a manifest abuse." Commonwealth v. Jones, 314 Pa. Super. 515, 523, 461 A.2d 276, 280 (1983) (citations omitted). In this case, the trial court allowed the psychologist to testify prior to C.H. because of time constraints on the court and the conflicting schedule of the psychologist. Under these circumstances, we cannot conclude that the trial court abused it discretion. As such, appellant's second issue is meritless.

Appellant's final issue is an assertion that the trial court either committed an error of law or abused its discretion when it

prohibited appellant from inquiring into C.H.'s sexual activities and experiences. Specifically, appellant argues that he should have been allowed to inquire into this area in order to establish an independent basis for C.H.'s knowledge of sexual terms and sexual acts. He also contends that by not allowing him to inquire into C.H.'s sexual experiences with her boyfriend, the trial court significantly impeded his ability to establish the victim's motivation to fabricate her claims of sexual abuse.

"It is well settled that questions concerning the admission or exclusion of evidence are within the sound discretion of the trial court and will be reversed on appeal only where a clear abuse of that discretion exists." Walasavage v. Marinelli, 344 Pa. Super. 396, 411, 483 A.2d 509, 516 (1984) (citation omitted). "The court may exclude evidence that is irrelevant, confusing, misleading, cumulative or prejudicial." Concorde Investments, Inc. V. Gallagher, 345 Pa. Super. 49, 56, 497 A.2d 637

(1985)(citation omitted).

The trial court based its decision not to allow appellant to question C.H. about her past sexual experience on two alternate and independent legal theories. First, the trial court applied the Rape Shield Law ("RSL"),[7] reasoning that, although applicable in criminal proceedings, the theory upon which it is based appears to apply in circumstances such as those present in this case. Application of the RSL, however, has not been extended to dependency cases. The scope of the RSL's application is limited to criminal prosecution relating to sexual offenses.[8] We doubt the RSL's direct relevance in this case as it is not a criminal

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[7] The RSL is codified at 18 Pa.C.S.A., § 3104 (a). It reads,

> (a) General rule.- Evidence of specific instances of the alleged victim's past sexual conduct, opinion evidence of the alleged victim's past sexual conduct, and reputation evidence of the alleged victim's past sexual conduct shall not be admissible in prosecution under this chapter except evidence of the alleged victim's past sexual conduct with the defendant where consent of the alleged victim is at issue and such evidence is otherwise admissible pursuant to the rules of evidence.

[8] See 18 Pa.C.S.A. § 3104 (a), supra, 18 Pa.C.S.A. § 3101 et seq. (relating to sexual offenses)

proceeding and because C.H.'s boyfriend has not been a party to this dependency proceeding.

The second theory relied on by the trial court was that inquiry into the victim's sexual activity was not relevant to the issue of whether appellant sexually abused the minor child. We agree. "Evidence is relevant if it logically or reasonably tends to prove or disprove a material fact in issue, tends to make such a fact more or less probable, or affords the basis for or supports a reasonable inference or presumption regarding the existence of a material fact." Commonwealth v. Davis, 381 Pa. Super. 483, 491, 554 A.2d 104, 108 (1989). In terms of general relevance, the victim's relationship with a third party simply does not tend to prove or disprove the allegation that she was sexually abused by appellant. As such, we find no abuse of discretion in excluding inquiry into C.H.'s past sexual activities and

experiences; appellant's argument is meritless.[9]

Having found all of the issues raised by appellant to be without merit, the order of the trial court is affirmed.

Order affirmed.

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9 Appellant's final contention is that the trial court's refusal to allow him to inquire into C.H.'s sexual activities significantly impeded his ability to establish her bias against him and prevented him from establishing her motivation to fabricate. However, our review of the record indicated that C.H. was questioned about her relationship with appellant and her feelings towards him. Additionally, several other witnesses testified as to the relationship between C.J. and appellant. As such, we cannot agree with appellant that his attempts to show bias were significantly impeded. To the contrary, we find that appellant had ample opportunity to attempt to establish the bias of the victim.

SUPERIOR COURT OF PENNSYLVANIA
PITTSBURGH DISTRICT

M.K. BORN: 4/8/77,	)	
C.H. BORN: 8/18/78,	)	
M.K. BORN: 5/18/83,	)	
MINOR CHILDREN,	)	
	)	
APPEAL OF:	)	No. 1815 Pgh 1992
HARRY NICKLOW, JR.	)	

J U D G M E N T

ON CONSIDERATION WHEREOF, it is now here ordered and adjudged by this Court that the judgment of the Court of Common Pleas of WESTMORELAND County be, and the same is hereby AFFIRMED.

BY THE COURT:

/s/ Eleanor R. Valecko
DEPUTY PROTHONOTARY

DATED: January 5, 1994

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SUPREME COURT OF PENNSYLVANIA
WESTERN DISTRICT

M.K. BORN: 4/8/77,	)	
C.H. BORN: 8/18/78,	)	
M.K. BORN: 5/18/83,	)	
MINOR CHILDREN,	)	
	)	
APPEAL OF:	)	No.0056 Alloc.
HARRY NICKLOW, JR.	)	Docket 1994

O R D E R

PER CURIAM

AND NOW, this 10th day of May, 1994, the Petition for Allowance of Appeal from the Superior Court is hereby denied.

Mr. Justice Montemuro is sitting by designation as Senior Justice pursuant to Judicial Assignment Docket No. 94 R1800, due to the unavailability of Mr. Justice Larsen, see No. 127 Judicial Administration Docket No. 1, filed October 28, 1993."

/s/ Irma T. Gardner
DEPUTY PROTHONOTARY

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